



Legislative Update

Covering Criminal Justice Legal Issues

Department of Public Advocacy

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Equal Justice

(This editorial appeared in the Courier Journal Tuesday, September 7, 1999 edition)

Kentucky is a state in which the attorney general brags about speeding death row inmates to their doom. Whether or not the record bears out that boast, it does suggest that those accused of capital crimes get decent legal representation.

If Ben Chandler is determined to rush people down the hall to the death chamber, somebody should be there to check his progress.

All too many people, across America, later been found innocent after being sentenced to die. And it's too late to object, after the switch is thrown or the drip injected.

Kentucky can't have a decent system of representation for indigent defendants, including those facing death row, without putting more money into it.

For a very long time, the state's system of public defenders has been denied adequate funding. A bipartisan, blue-ribbon panel of legislators, officials, judges and attorneys reported this summer on a thorough study that confirms again this very point.

"The facts are clear. Of the 20 states studied, Kentucky allocates the least money per public defender case. And who wants to be last on a list like that?"

The report recommended \$11.7 million more per year.

This is a small price to pay to help ensure justice.

It's little enough to appropriate for the purpose for making "equal justice under the law" something more than a piece of hollow, self-satisfying rhetoric.

The facts are clear. Of the 20 states studied, Kentucky allocates the least money per public defender case. And who wants to be last on a list like that?

Entry-level salaries for Kentucky's public defenders are the lowest, too: a miserable \$23,388. And things don't get much better as lawyers rise to senior positions: an average of \$39,289 for hard legal work often involving the highest possible stakes.

The national experts suggest workloads of, say, 150 felony cases, 200 juvenile cases or 400 misdemeanor cases. In Kentucky, we burden our public defenders with mixed loads of 400 to 700 cases.

The aforementioned Mr. Chandler has been personally supportive of the Department of Public Advocacy as it tries to deal with this chronic funding problem. But the person who can make the most difference is the one who has been spending time, recently, developing next year's budget plans: Paul Patton.

Gov. Paul Patton wanted Ernie Lewis to run this operation, and Mr. Lewis was a good appointment. Now the Governor ought to give the his man the money needed to do the job right. And the General Assembly ought to stamp the request "approved."

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DPA Opens Paintsville Office

On October 19, 1999, the Department held a grand opening ceremony for its newest office in Paintsville, Kentucky which will serve a four-county area of the state - **Johnson, Lawrence, Magoffin and Martin Counties**. 40+ people gathered to celebrate the opening of this office on a colorful Fall day in Eastern Kentucky. The opening of this new office brings the Department of Public Advocacy to a total of 25 full-time offices throughout the state.

The office is located at 236 College Street, Paintsville Kentucky and is staffed by Director Kristi Gray, Attorneys Mark Reider and Gary Griffith, Investigator Ronald Keeton, and Secretary Lou Haney. Those dignitaries in attendance included Supreme Court Justice **Janet Stumbo**, Cabinet Secretary **Ronald B. McCloud**, Director of Appalachian Research and Defense Fund **John Rosenberg** and Attorney **John David Preston**. At the ceremony Supreme Court Justice **Janet Stumbo** noted that "The right to counsel distinguishes us as a country that values reliable fact-finding and decision-making through an adversary system that only works if we have equal advocates on both sides of the criminal dispute. It is great to see that poor people charged with crime in these four Eastern Kentucky counties can now receive proper representation."

"This Administration is proud to formally recognize the opening of the Paintsville Office which represents a significant step in our goal of delivering services through full-time offices across the Commonwealth. We appreciate the good work local public defenders have been doing and we appreciate the support we have received from judges, prosecutors, and other parts of the criminal justice system in the opening of this office."

Ronald B. McCloud, Secretary of the Public Protection and Regulation Cabinet.

"20 years ago, DPA began to open up full-time offices throughout Eastern Kentucky through an LEAA Grant. Today, with the opening of the Paintsville Office, the vision of having all counties in Eastern Kentucky covered by a full-time office is almost complete. We are proud to have a new office in Paintsville, and look forward to serving the courts and the people of Johnson, Martin, Lawrence, and Magoffin Counties." **Public Advocate Ernie Lewis**

Contract Attorneys Dan Rowland, Mary Lou Chandler and Michael Hogan were honored for their many years of service to the county's defender program.

Reasonable Funding of Defenders Needed

As you know, the 22-member **Blue Ribbon Group**, was formed to address the chronic problems of public defender system and propose solutions.

That proposal will be the blueprint for creating a strategy that will ensure an appropriately funded indigent defense system for the 21st century.

I, too, was a member of the **Blue Ribbon Group** and was impressed by the work that went into the process. As a result, I am committed to seeing that the Department of Public Advocacy has a reasonable funding level to give effective representation to Kentucky's indigent accused of crime.

Secretary Ronald B. Cloud
Public Protection & Regulation Cabinet
at the 27th Annual Public Defenders' Conference, July, 1999

A Lifetime Opportunity for Kentucky



The time is right for Kentucky to complete the establishment of a reasonably funded statewide indigent defense delivery system. Prominent Kentuckians who studied the state's defender system have come to clear conclusions.

The *Report of the Blue Ribbon Group on Improving Indigent Defense in the 21st Century* (BRG) issued by a 22 member group of leaders in June, 1999 provides strong, broad based support for a significant increase in defender funding with its recommendation of an \$11.7 million dollar increase in the General Fund contribution to DPA.

The Kentucky Criminal Justice Council approved of recommendations #1-11, which in essence support this budget request. The Chief Justice has individually written in support of higher salaries for public defenders, in addition to his support as a Blue Ribbon Group member. The editorial boards of the *Courier Journal* (see cover of this issue) and the *Lexington Herald-Leader* as well as *Owensboro Inquirer* have expressed their strong support for making this a priority of this year's budget. If we miss this opportunity, it will be difficult to mount a similar effort to obtain a reasonable base-line funding level at any time in the foreseeable future. Worse, the consequences for this missed opportunity would be serious.

The BRG found DPA at the bottom of all public defender agencies in the nation.

It is important to view this budget request from the perspective of where Kentucky finds itself. Under the four benchmarks contained in the BRG Report, funding-per-case, funding-per-capita, defender salaries, and defender caseloads, the Kentucky public defender system is at the bottom of the barrel. It is from this vantagepoint that this increased funding request is best understood.

DPA's services are necessary. They are required by the Constitutions of the United States and Kentucky. The judges in the Kentucky Court of Justice depend upon defenders being in the courts everyday. The public depends upon defenders to make the courts work in an efficient manner in a way that insures public confidence in the results. Poor Kentucky citizens depend upon defenders for ensuring justice.

The budget request tracks the Blue Ribbon Group Report.

The DPA budget request for the biennium addresses each of the problems recognized in the BRG Report. It would raise the cost-per-case and the cost-per-capita to place Kentucky in the middle of the nation among indigent defense delivery systems. It would raise defender salaries to \$30,000, which would place Kentucky defenders at the same point defenders are presently in surrounding states. It would complete the full-time system. It would both lower caseloads and enhance juvenile representation. It would create an administrative infrastructure for the 21st Century that would continue the excellence in management and efficiency recognized by the BRG.

A reasonably funded statewide indigent defense delivery system is in Kentucky's interests.

Government has the responsibility to fund the full cost of quality legal representation for all eligible persons...

ABA Standards for Criminal Justice:
Providing Defense Services 5-1.6 (3rd ed. 1992)

[In] our adversary system of criminal justice, any person hauled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him.

Gideon v. Wainwright, 372 U.S. 355 (1963)

Blue Ribbon Group Addresses High Caseloads

By Robert G. Lawson, Professor, University of Kentucky School of Law,
and Judge Denise M. Clayton, Jefferson County District Court

There are two primary reasons why the Kentucky public defender system is the lowest-funded public defender system in the country using the two recognized benchmarks. First, the salaries paid to defenders are among the lowest in the nation. Second, caseloads for defenders are much too high. Together, they seriously threaten the quality of services rendered indigents by Kentucky's public defenders. An attorney with 50% or more cases than they can handle, no matter how conscientious, cannot properly represent his or her client.

Caseloads are far too high in Kentucky's public defender system. Recognized national standards set caseload maximums at 150 felonies opened per year, 200 juvenile cases, or 400 misdemeanors, or a combination of the above. These caseload standards have "proven resilient over time, and provide a rough measure of caseloads." (BRG Final Report, at 27).

Finding #5 of the Blue Ribbon Group Final Report is that "The Department of Public Advocacy Per Attorney Caseload Far Exceeds National Caseload Standards." This finding is reflected in many areas of the state. In FY 98, a representative sample of high per attorney open caseloads per year demonstrates how the standards are being violated: Louisville (700), Lexington (545), Henderson (767), Madisonville (596), Ashland (737), Paducah (485) Hazard (612). This violation was especially apparent among urban juvenile defenders. In Louisville, defenders opened 843 per lawyer, while in Lexington they opened 1198 per lawyer.

The Department of Public Advocacy has set a goal of reducing caseloads from their present high rate to 450 open cases per lawyer in urban areas, and 350 open cases per lawyer in rural areas (due primarily to travel concerns). In setting this goal, the Department is addressing a problem that has existed virtually from the beginning of public advocacy in Kentucky, one that needs to be resolved sooner rather than later.

The Blue Ribbon Group has endorsed the reduction of caseloads consistent with DPA's goal in Recommendation #6: **Full-Time Trial Staff Should Be Increased to Bring Caseloads Per Attorney Closer to the National Standards. The Figure Should Be No More Than 350 in Rural Areas and 450 in Urban Areas.**

The 12 Recommendations of the Blue Ribbon Group

The Kentucky Blue Ribbon Group on Improving Indigent Defense in the 21st Century consists of more than 20 distinguished members representing all three branches of government, the bar and key officials of criminal justice agencies across the state (the membership of the group appears on the back page of this newsletter).

The 12 Recommendations of the Blue Ribbon Group

The Kentucky Blue Ribbon Group in Improving Indigent Defense in the 21st Century consisted of 22 distinguished members representing all three branches of government, the bar and key officials of criminal justice agencies across the state. A list of the members is available [here](#).

AS PART OF THEIR FINAL REPORT, THE BLUE RIBBON GROUP SUBMITTED THE FOLLOWING 12 RECOMMENDATIONS:

#1 – Indigent Defense is a Necessary Function of Government, and an Essential and Co-Equal Partner in the Criminal Justice System.

#2 – The Kentucky Public Defender System Cannot Play its Necessary Role for Courts, Clients, and

the Public in this Criminal Justice System Without a Significant Increase in Funding.

#3 – The Full-Time System should be completed.

#4 – Higher Salaries Should Be Paid to Defenders and Prosecutors; Salary Parity is the Goal.

#5 – Loan Forgiveness Programs Should Be Made Available to Prosecutors and Defenders.

#6 – Full-Time Trial Staff Should Be Increased to Bring Caseloads Per Attorney Closer to the National Standards. The Figure Should Be No More Than 350 in Rural Areas and 450 in Urban Areas.

#7 – The Department of Public Advocacy and the Court of Justice Must Increase their Efforts to Collect Reasonable Fees from Public Defender Clients, Including Considering the Use of Private Collection Organizations.

#8 – Prosecutor and Defender Increases Should be Considered when a Judicial Position is Added.

#9 – It is Important that Public Defender Counsel be Available to Children in Juvenile Court Proceedings.

#10 – It is Imperative that Kentucky Reasonably Fund Indigent Capital Defense both at the Trial and Post-Trial Levels.

#11 – Public Defender Services are Constitutionally Mandated while Resources are Scarce. It is Important for all Eligible Persons who want to be Represented by a Lawyer, but only those who are Eligible to be Appointed a Public Defender. The Court of Justice, and Especially AOC and DPA are Encouraged to Work Cooperatively to Ensure Appropriate Public Defender Appointments.

#12 – The \$11.7 Million Additional Funding for Each of the 2 Years Is Reasonable and Necessary to Meet DPA's Documented Funding Needs as Described in PD21.

Kentucky is a National Leader in Collecting Revenue from Defendants

The Department of Public Advocacy receives revenue from defendants from three sources:

- 1) \$52.50 administrative fee from each public defender client able to afford it as ordered by the judge, \$2.50 of which goes to the clerks. In 1998, this fee was increased from \$40.00;
- 2) varying amounts of recoupment funds from clients who are partially indigent. This fee has existed since 1972, and initially was the responsibility of the county attorneys to collect;
- 3) a \$50.00 DUI fee that is part of a \$200 fee assessed on each DUI conviction.
The DUI and administrative fees were enacted in the 1994 HB 388 as a result of recommendations from the Governor's Task Force on Public Defenders to deal with the funding crisis in indigent defense.

These 3 revenue sources produced \$2.8 million in FY 98:

- a. Administrative fee: \$692,000
- b. DUI fee:.....\$1,121,000
- c. Recoupment.....\$996,000

DPA is highly dependent on this revenue to meet its ongoing, recurring obligations. In FY 98, this revenue funded 14.7% of DPA's delivery of services. From 1996-98, the only growth in funding of services was from revenue sources. General Fund dollars were static.

There are 12 states that collect administrative fees from defendants. Eight of these are able to provide figures for all revenue collected from defendants. These national figures reveal that Kentucky is the second leading state in the nation in collecting money from defendants and in dependence on that money for its statewide program of representation. Only South Carolina collects more total funds and is more dependent on those funds.

Kentucky is the national leader in administrative fee collections. DPA collects more per capita (\$0.18) in administrative fees than any of the 12 states with this type of fee. The next highest per capita rate is \$0.11 in Tennessee. No other state has a rate over \$0.10. Less than \$0.05 is collected in five of the states.

Kentucky's administrative fee collections provide 3.7% of its budget. This is by far the highest percentage of any state using this fee. The next closest is Tennessee at 1.7%.

While Kentucky collects more administrative fee per capita (\$0.18) from defendants than any other program in the country, it is funded at one of the lowest per capita rates (\$5.09) in the country.

Kentucky is collecting more in revenue from the 3 revenue sources (\$2.8 million in FY98) than any other public defender program in the country except South Carolina.

At 14.7% of its total funding, no other public defender program in the country other than South Carolina is as successful at collecting revenue from defendants and is as dependant on revenue from defendants for delivery of

services as is Kentucky.

Kentucky is collecting more in actual dollars from administrative fees (\$691,651 in FY 98) than any other state except for Florida which collects \$1.1 million. Florida's per capita collection rate of \$0.08 is far below Kentucky's which is at \$0.18. Also, Florida's population is 14.4 million compared to Kentucky's 3.8 million.

The Final Report of the Blue Ribbon Group (June 1, 1999) made the following finding and recommendation:

Finding #3: The Department of Public Advocacy is Effective in Indigent Defense Cost Recovery Compared to Other States;

Recommendation #7: The Department of Public Advocacy and The Court of Justice Must Increase their Efforts to collect Reasonable Fees from Public Defender Clients, Including Considering the Use of Private Collection Organizations.

The *Blue Ribbon Group Report* placed this Recommendation #7 in context when it observed that the likelihood of additional money from revenue sources was limited, "It is our strong belief that these revenue funds are virtually tapped out. In fact, there are over 50 legislative requirements for court fees, costs, restitution, fines, etc., having to do with criminal and civil cases. In many cases, indigent defendants are ordered to pay several of these costs, some of which are mandated by statute. In looking at alternative revenue collected in various states for the use of public defense, one figure is seldom calculated and that is the cost of the revenue collection. Few, if any states have attempted to calculate whether the net revenue brought in by these programs wind up as a profit or a loss. Based upon work that we have done in the area of alternative revenue, it is our belief that it would not be wise to attempt to collect from additional defendants to raise the alternative revenue source because the cost to do that would likely exceed the actual revenue brought in. Perhaps more importantly, Kentucky is already at the top of the list of comparable states when it comes to alternative revenue collections."

PD21: The Blueprint for Public Defending in the 21st Century

PD21 is the short title for the Department of Public Advocacy's plan for public defending in the 21st Century. Planning for the new millenium has been the subject of much thought and visioning among public defenders, Commission members, and Blue Ribbon Group members over the last decade. That blueprint is now completed. If funded, PD21 would enable DPA to provide high quality cost-effective representation to eligible clients. It would also enable DPA to rise out of the status of being the lowest public defender agency in the country to the middle of the pack.

PD21 has gained plenty of support. At the November 1998 meeting of the Public Advocacy Commission, PD21 for the Trial Division was presented and approved. The Public Advocacy Commission early in the 1990s stated as one of their major goals the completion of a full-time public defender system. The fleshed out version of this goal was PD21 as passed by the Commission. In their March 1998 meeting, the Public Advocacy Commission was presented PD21 for the Post-Trial Division and the Law-Operations Division. Again, the Commission passed this plan.

The prestigious Blue Ribbon Group was presented PD21 at their second meeting. Cost estimates were attached to these plans. The Blue Ribbon Group passed recommendations directly tied to the PD21 Plan. The cost estimates were directly endorsed as that which was needed for indigent defense services to be reasonably funded for the 21st Century.

PD21: The Trial Division

PD21 for the Trial Division is to complete the full-time system in all 120 counties by 2004. In more detail, the plan for 2000-2002 would involve the following:

- 3 new full-time offices in 2000-2002, with an additional 3 offices in 2002-2004. Eddyville would take much of the present Hopkinsville Office, whose boundaries would be redrawn. The Eddyville Office would cover Lyon, Caldwell, Trigg, Livingston, and Crittenden Counties. The redrawn Hopkinsville Office would consist of Christian and new counties Todd and Logan.
- A second office would open in Mayfield, covering Graves, Marshall, Calloway, Fulton, and Hickman Counties. This would reduce the size of the Paducah Office, which would include McCracken, and new counties Ballard and Carlisle.
- A third office would open in Bullitt County, covering Bullitt and Nelson Counties.
- Additional counties would be covered from existing offices in 2000-2002. The effected offices would be Owensboro (Ohio and Hancock), Hopkinsville (Todd and Logan), Bowling Green (Butler, Edmonson, Simpson, and Allen), Elizabethtown (Meade, Breckenridge), Stanford (Boyle, Mercer), Frankfort (Woodford), Morehead (Bath and Menifee), and Maysville (Lewis).
- An additional support staff person for each field office in order to make the offices more efficient. Offices now staffed with 3-9 lawyers, one investigator, and 1 secretary for each 3 lawyers would now have an additional investigator, mitigation specialist, alternative sentencing worker, or paralegal, or a combination of these roles.
- Adequate compensation for private lawyers handling conflict cases.

- 100+ counties would be covered by a full-time office by July 2002.

PD21: The Post-Trial Division

PD21 for the Post-Trial Division is consistent with PD21 for the Trial Division by its commitment to full-time public defending in order to maximize client representation for incarcerated persons. This plan consists of the following:

- Appellate Branch equity with the Attorney General's Office. This would include 6 new appellate attorneys to handle 120 Court of Appeals cases and 2 transcriptionists responsible for converting videotaped records into a written transcript, needed to maximize attorney efficiency.
- An increase from \$850 to \$3000 maximum for private lawyers handling appeals which the Appellate Branch is not staffed to handle.
- Four additional lawyers to represent Post-Trial clients on death row, two for Capital Appeals and two for Capital Post-Conviction.
- Access to court for adult inmates. This would enable the Post-Conviction Branch to provide access which is now unavailable for adults now in private prisons and in county jails on Class D offenses.
- Access to court for detained and committed juveniles. This would enable the Juvenile Post-Dispositional Branch to provide access to court for juveniles in detention centers and supervised placement revocation hearings.

PD21: Law Operations Division

The Law Operations Division is the administrative arm of the Department of Public Advocacy. As caseload has burgeoned, scarce resources have been used to provide counsel for indigents. Administrative services have not kept up, outstripping the capacity of Law Operations to provide personnel, caseload, technological, inventory, payroll, library, and other administrative services. The public, the legislature, the criminal justice system, and DPA staff all demand reasonable service from this Division. PD21 contemplates a reasonably funded administrative services effort, including:

- 5 branches in the Law Operations Division, consisting of Human Resources, Information Services, Fiscal Operations, Operations, and Education and Development.
- An additional librarian. We now have 1 librarian serving 24 libraries across the Commonwealth as well as an extensive library in Frankfort.
- 2 Accountants and 2 clerks.
- 4 information technology positions.

The overall annual cost of PD21 is \$11.7 million additional General Fund dollars. In response, the Blue Ribbon Group made the following recommendation:

Recommendation No. 12: The \$11.7 Million Additional Funding for Each of the 2 Years is Reasonable and Necessary to Meet DPA's Documented Funding Needs as Described in PD21.

Justice in criminal cases also demands that poor people accused of crimes receive legal assistance. Our Constitution guarantees defendants the right to a lawyer in major criminal cases. We preserve this right for indigent defendants through public defenders or appointed counsel. Working as a prosecutor for 15 years, I learned that our criminal justice system cannot function properly unless

we have the adequate funding, training,
and resources for indigent defense.

Janet Reno, Attorney General
Law Day, 1999

The Blue Ribbon Group on Improving Indigent Defense in the 21st Century

Co-Chairs:

Michael D. Bowling, Esq.
Wilson, Stanley, Bowling & Constanzo

Robert F. Stephens, Secretary
Kentucky Justice Cabinet

Jeffrey H. Hoover, Representative
Kentucky General Assembly

Joseph E. Lambert, Chief Justice
Kentucky Supreme Court

Robert G. Lawson, Professor
University of Kentucky School of Law

Members:

Kim Allen, Executive Director
Kentucky Criminal Justice Cabinet

Scotty Baesler, Esq.
Wyatt Tarrant & Combs

Robert W. Carran, Esq.
Taliaferro, Mehling, Shirooni & Carran

Richard H.C. Clay, Past President
Kentucky Bar Association

Denise M. Clayton, Judge
Jefferson County District Court

Richard F. Dawahare, Esq.
Attorney-at-Law, Lexington

Laura M. Douglas, VP/General Counsel
Louisville Water Company

Robert C. Ewald, Esq.
Wyatt Tarrant & Combs

James M. Lovell, Esq.
Attorney-at-Law, Paris

Ronald B. McCloud, Secretary
Kentucky Public Protection & Regulation Cabinet

Harry Moberly, Jr., Representative
Kentucky General Assembly

Phillip R. Patton, Commonwealth Attorney
Barren County, Kentucky

John M. Rosenberg, Director
Appalachian Research and Defense Fund, Inc.

Kathy W. Stein, Representative
Kentucky General Assembly

Donald L. Stepner, Past-President
Kentucky Bar Association

David L. Williams, Senator
Kentucky General Assembly